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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/927,996	08/10/2001	C. Reuben Walker		7352

7590

09/22/2003

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EXAMINER

TELLER, ROY R

ART UNIT

PAPER NUMBER

1654

DATE MAILED: 09/22/2003

8

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/927,996

Applicant(s)

WALKER, C. REUBEN

Examiner

Roy Teller

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 July 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This office action is in response to paper No: 7, received 7/11/03, in which applicant cancelled claims 1-9 and 20, and added new claims 21-30.

Claims 21-30 are pending.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 23 and 26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 23 recites "... an effluent pH that is to 7.", this is vague and indefinite. Is the pH 7 or up to pH 7? It is unclear.

Claim 26 recites "creating an effluent having a pH of 7.", this is vague and indefinite. Does draining the slurry create a treated crawfish meal or does draining the slurry create an effluent having a pH of 7. it is unclear.

Claim Rejections - 35 USC § 103

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 21-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peniston et al (USPN 4,199,496).

The claimed invention is drawn to a method for reducing the calcium and phosphorus ration and increasing crude protein in shellfish waste meal. This is accomplished by mixing the shellfish waste meal with hydrochloric acid, adding water to adjust the pH of the slurry, stirring, settling and draining the slurry, rinsing the treated shellfish meal with water, checking the pH of the treated shellfish meal, draining and drying the shellfish meal.

Peniston teaches the extraction and recovery of chemicals from the shell of various crustacea species and discloses the recovery of a calcium compound from the shell matrix (see abstract). Peniston teaches the recovery of protein by feeding the solid waste continuously to a series of countercurrent vessels, column 8, lines 57-58. Peniston discloses that the rates of extraction are improved by reducing the particle size of the shell fragment, column 7, lines 30-32. Peniston teaches that shellfish waste should be reduced to a size in the range of 0.05"-0.15" mean diameter, column 8, lines 38-39. Peniston teaches a 8-14 mesh per square inch screen represents a practical balance between diffusion and loss of material in the recovery steps, column 7, lines 32-35. Peniston discloses demineralization by treatment for 24 hours with HCL, column 5, lines 34-35. Peniston discloses that by processing the shell of crustacea, both the chitin and the protein can be recovered, column 6, lines 62-66. Peniston teaches that the protein is

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precipitated by hydrochloric acid, column 9, lines 43 and 45, the protein is collected and washed, column 9, line 50. Peniston discloses the protein starts to precipitate at the isoelectric point, pH 3.5 to 4.5, column 9, lines 41-42. Peniston teaches that the advantage of this invention is to provide a process for recovering protein at a low cost, to provide a commercially useful material, columns 7-8, lines 63-65 and line 2.

Peniston does not teach some of the claim 21 and 26 steps such as: stirring the slurry, settling the slurry, draining the treated shellfish meal, or drying the treated shellfish meal. Absent evidence to the contrary (or unexpected results) the remaining limitations recited above are routine optimization of a known method.

It would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made to use the protein extraction method of Peniston in order to enhance the commercial viability of this method.

Applicant's arguments, as they pertain to the U.S.C. 103 rejection above, have been carefully considered but are not deemed to be persuasive of error in the rejection.

In response to applicant's argument that the reference fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies are not recited-or, as drafted, are unclear as to their meaning (see U.S.C. 112, second paragraph rejection above)- in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Conclusion

All claims are rejected.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Roy Teller whose telephone number is (703) 305-4243. The examiner can normally be reached on Monday-Friday from 5:30 am to 2:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brenda Brumback, can be reached on (703) 306-3220. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

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1654
9/16/03

RT



CHRISTOPHER R. TATE
PRIMARY EXAMINER